

PART 5 OF THE CONSTITUTION

## Protocol on planning

### 1 Introduction

- 1.1 Town and Country Planning relies on informed judgement within a firm policy context. It can be highly contentious because decisions affect the daily lives of everyone and the private lives of individuals, landowners and developers. The key purposes of the planning system are to steer and control development in the public interest. It necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their setting. It is important therefore that the Authority should make decisions affecting these interests openly, impartially, with sound judgement and for justifiable reasons. The process should leave no grounds for suggesting that a decision has been partial, biased or not well-founded in any way.
- 1.2 Members and officers are both involved in operating the planning system. They have different, but complementary, roles. Both serve the public, but Members are responsible to the electorate, while officers are responsible to the Council as a whole. Officers advise Members and the Council and carry out the Council's work. They are employed by the Council, not by individual Members, and it follows that instructions may only be given to officers through a Council or Committee decision. They must always act impartially. The successful operation of the planning process relies on mutual trust and understanding of each other's role. It also relies on each ensuring that they act in a way which is not only fair and impartial but is also clearly seen to be so. Decision making needs to be open and transparent.
- 1.3 The Authority endorses the Royal Town Planning Institute (RTPI) Code of Conduct (**Appendix A**), and in particular that RTPI members shall not make or subscribe to any statements or reports which are contrary to their own professional opinions. All officers advising on planning matters are expected to act in accordance with the RTPI 'Code of Conduct' whether or not they are RTPI members. Members should respect these professional responsibilities at all times.

### 2 Role of Members

- 2.1 Members set the Authority's planning policy and determine planning applications and enforcement issues within the context of that policy. It is a requirement of the Members' Code of Conduct that Members must not in their official capacity, or in any other circumstances, use their position improperly to confer on or secure for themselves or any other person an advantage or disadvantage.

- 2.2 In carrying out their representational role Members will be approached by applicants and objectors. In responding to these approaches Members may give a view but should ensure that they retain an open mind in advance of consideration of the application by Planning Committee. Where Members express an opinion they should make it clear that they will only be able to decide whether to support or oppose an application after having heard all the relevant evidence and arguments at Committee.
- 2.3 While Members representational role primarily relates to their electoral area, as members of the Planning Committee they assume wider responsibilities for the whole of the District. It is important in pursuit of consistency and certainty of decision making that planning policies are equitably and evenly applied. Planning Committee members should ensure that their individual electoral duties are subsumed within these wider considerations.
- 2.4 When Members come to make a decision on a planning matter, they must:-
- act fairly and openly;
  - approach each case with an open mind;
  - use adopted policies and guidance as starting and reference points for decision making;
  - carefully weigh up all relevant issues before reaching a view on a particular case;
  - determine each case on its own merits;
  - ensure that there are clear and substantial reasons for their decisions, and that those reasons are clearly stated.

### 3 Role of Officers

- 3.1 The function of officers is to advise and assist Members in matters of planning policy and in their determination of planning applications and enforcement issues by:-
- providing impartial and professional advice;
  - making sure that all the available information necessary for the decision to be made, including details of representations, is given;
  - providing clear and accurate analysis of the issues;
  - using adopted policies and guidance as starting and reference points for decision making;
  - taking into account material considerations;

- giving a clear recommendation;
- carrying out the decisions of the Authority

3.2 Where Council have delegated certain planning decisions to officers, officers will be bound to act in accordance with the principles for Members set out above in this Code of Practice.

#### 4 Discussions with Applicants

##### Officers

4.1 Pre-application meetings or other meetings with applicants are encouraged to ensure beneficial development, to resolve matters which might otherwise lead to the refusal of planning permission, or to advise that permission is unlikely to be granted. These meetings are normally held by officers and to avoid such meetings being misunderstood:

- potentially contentious meetings will, where possible, be attended by at least two officers, including a principal officer;
- it will be made clear at the outset that the discussion will not bind the Authority to making a particular decision and that any views expressed are personal and/or provisional. If necessary officers will refrain from expressing a view until they have considered the matter further or consulted colleagues;
- the advice will be consistent and based upon the Development Plan and material considerations. There should be no significant difference in the interpretation of planning policies among planning officers. Officers must seek advice when necessary from Senior Officers to ensure that their assessment of a case is sound;
- where possible, a note of the discussion will be taken and placed on file and made available for public inspection at the appropriate time;
- for major or contentious applications, where possible, a follow-up letter will be sent by officers re-emphasising the non-binding nature of discussions.

## Members

- 4.2 Applicants may from time to time seek to meet Members. If attending such meetings Members will need to ensure that they make clear that any opinions they express are only provisional and it will not be until all relevant evidence and arguments have been heard by them at the Planning Committee that they will be able to reach a firm conclusion. Formal pre-arranged meetings with Members should also be attended by an officer with an invitation extended to the Chair of the Planning Committee or his/her nominee.

## 5 Lobbying

- 5.1 Lobbying is a normal and perfectly proper part of the political process and it is quite common for applicants or other interested parties to want to discuss a proposed development with Members, or distribute written material to Members before a planning application is determined. This can help Members' understanding of the issues and concerns associated with an application.

- 5.2 However, such lobbying can lead, unless care and common sense is exercised by all the parties involved, to the impartiality of a Member being called into question. Members are under an obligation to determine matters on their planning merits. That means that they must not make up their minds before receiving and reading the officer reports or before hearing all proper debate on the matter out of which new information may arise.

- 5.3 Members must act in the public interest and not at the behest of any individual or interest. If the Member feels that he/she no longer retains an open mind on the matter, but that his/her impartiality has been compromised, he/she will need to decide whether to withdraw from the decision making process.

## 6 The Party or Other Whip

- 6.1 Members cannot accept an instruction from anyone to determine an application in a particular way, as they must determine the issue on its merits. Whilst they may give appropriate weight to the views of other Members whether expressed in the Committee meeting or in prior discussions, they must determine the application on its merits and should not take into account any factor which they are not prepared to state in open Committee. As a result it is not appropriate for any Party or other group of Members to instruct Members to vote in a particular manner on any application or to apply or threaten to apply any sanction to any Member who voted contrary to the group's collective view. Where such a whip has been applied, Members should declare it in exactly the same manner as they would declare any other attempt at lobbying.

## 7 Membership of Another Local Authority

7.1 A member of a parish or other council can discuss a planning matter at that level and then also participate at the Authority's Planning Committee. However, if at the other council's meeting, or indeed elsewhere, the Member had given the impression that they had made their mind up on the application before hearing all the arguments (particularly those presented later at the Planning Committee) then they could be considered to have predetermined the matter.

## 8 Applications affecting a Member's Interests

8.1 Members must consider each particular situation on its merits as the need to declare an interest will depend upon the nature, scale and impact of a particular application.

## 9 Officers' Reports to Committee

9.1 Decisions on planning applications have to be taken in accordance with the provisions of the development plan and the Authority's statutory duty under Section 54A of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004.

Officers' report to the Planning Committee will refer to:-

- the history of the site;
- the proposal;
- the substance of any written representations received including consultees;
- the relevant policies applicable to the application;
- any other material considerations;
- a professional appraisal of the application which clearly justifies the recommendation;
- any material considerations that justify a departure from the development plan;
- a clear recommendation;

9.2 Where a Member receives relevant information in respect of an application which is not contained in the Committee report on the application, the Member should advise officers as soon as possible so that the information can be tested. If new information is introduced into the debate at the Committee the opportunity should be provided for comments or a response to be made as otherwise it might lead to the Committee taking a decision on the basis of information which subsequently proves to be incorrect.

## 10 Decisions Contrary to Officer Recommendations

- 10.1 From time to time, Members of the Planning Committee will disagree with the professional advice given by or on behalf of the Planning Manager – Development Management. Development Management is not an absolute science and there can be genuine disagreement about the implications of a particular proposal, and about the weight to be attached to relevant issues. Officers will be present at the Committee making the decision and will be able to advise if the Committee is in danger of acting unreasonably either because matters under consideration are not relevant planning issues or because the facts simply cannot support the conclusion which the Members have drawn and the Committee is in danger of acting unreasonably. Members may also consult officers prior to the Committee meeting to assist in formulating their views.
- 10.2 In cases where the Planning Committee decides for good and valid reasons to depart from the officer's recommendation, the Committee must define the reasons for rejecting the officer's recommendation including the reasons for imposing certain conditions prior to the vote being taken and those reasons must be recorded in the minutes of the meeting.
- 10.3 Where an appeal arises against a decision to refuse an application contrary to officers recommendation, officers will give support to the Committee in preparing evidence for the appeal, but it may be necessary in support of the Council's position for Members of the Planning Committee making the decision to appear at any appeal hearing and give evidence of the reasons for the Committee's decision. Officers should not compromise their professional judgement during this process and should make it clear when they are advising on views that are not their own. In such circumstances the Council may consider the appointment of Consultants where technical or professional evidence is required to assist their position at a hearing or inquiry.

## 11 Site Visits

- 11.1 Site visits by Committee Members can be useful to identify features of a proposal which may be difficult to convey in a written report, but site visits can delay the decision on an application and should be requested as early as possible. The possible reasons for site visits are set out in 12.2, 12.4 and 12.6.
- 11.2 Cases may be referred to a site visit by Members or by officers who may judge that a Member site visit is the most appropriate means of ensuring Members get a clear understanding of the proposal and the issues raised.
- 11.3 The reasons for a decision to carry out a site visit will be set out in the report presented to Committee.
- 11.4 Site visits are:-
- fact finding exercises;

- to enable officers to point out relevant features;
- to enable questions of fact by Members or Parish Council representatives to be asked on site for clarification;
- not part of the formal consideration of the application and therefore public rights of attendance do not apply.

11.5 The Planning Site Inspection Group undertake the site visit as a formal group and will enter and leave the site as such. Members should not enter into discussions with applicants, agents or third parties whilst on the site visit. Debate on the application other than for clarification of matters of fact by the Site Inspection Group will only take place at the subsequent Committee meeting as all relevant parties may not be in attendance at the site.

11.6 In addition to those planned site visits notified to all Members of the Committee, wherever possible and deemed necessary the Planning Site Inspection Group will visit without prior notification the sites of applications where public speakers have notified an intention to address the Committee. The purpose of these visits will be to familiarise themselves with the setting and context of the site and to gain a clearer understanding of the issues likely to be raised during consideration of the application by the Committee.

## 12 Planning Applications by Members or Officers

12.1 The impartiality of the planning process requires particular care when dealing with an application by anyone who might ordinarily be involved in that process. Whenever any Member, Planning Officer, Senior Officer or Senior Manager of the Council submits an application to the Authority for himself/herself or on behalf of any other person, they will inform both the Planning Manager and the Authority's *Monitoring Officer* and not take part in processing or determining the application.

12.2 The Planning Manager will consider whether such applications are determined at the appropriate Committee Meeting and not under any delegated powers. The consideration of such a proposal from a Member would be considered as a disclosable pecuniary interest and the Member will be required to withdraw from any meeting where the proposal is being considered.

12.3 A Member or officer shall not have any different rights than a member of the public in discussing their proposal with a planning officer in advance of consideration by a Committee and making written representations.

## 13 Planning Applications by the Authority

13.1 The Authority itself requires planning permission to carry out or authorise development on land it owns. These applications will be treated in the same way as those from private applicants in accordance with the Town and Country Planning General Regulations.

13.2 Where an application relates to a project or land for which an officer of the Development Directorate has responsibility, that officer will play no part in the assessment of the application or the decision. The officer will withdraw from the Planning Committee when the application is being considered.

#### 14 Monitoring of the Decisions Taken

14.1 On a regular basis the decisions taken by the Planning Committee will be reviewed by the Planning Manager in consultation with the Chair and Vice Chair of the Planning Committee. This review will include examples of cases on planning and listed building applications; permitted departures from the Development Plan; planning appeals; and enforcement cases. Any need to reconsider any policies or practices will be reported to the appropriate Committee.

#### 15 Planning Policy

15.1 Many of the aspects of this Code of Practice that are relevant to planning applications, in particular declarations of interest, meetings with interested parties and lobbying, are equally relevant to the formulation of planning policy through the development plan process and any other supplementary policy guidance.

15.2 At all stages in the preparation of policies for the development plan or any other planning guidance:-

- officers will consider Government policy guidance and other legal requirements as the basis for policies;
- more than one officer will be involved in the development of any one area of policy;
- where possible more than one Member will be involved at formal consultation events;
- Members of *Cabinet* and the Planning Committee will be consulted at appropriate stages on the Authority's statutory plans and some consultation papers on planning and other relevant land use policies. Delegated Authority responses will be subject to consultation with the Portfolio Member with responsibility for Planning;
- all representations on draft policies will be recorded and analysed. The records of these together with the Authority's response will be placed on public deposit at key stages in plan production;
- the Local Plan will be formally approved and adopted by a meeting of the Council following a recommendation from *Cabinet*;
- advice given to Members of the Authority on the interpretation of policies will be copied to the Chair of Planning Committee.



## 16 Public Participation at Committee Meetings

- 16.1 The Authority has procedures that ensure that where they receive representations from or on behalf of the applicant or from members of the public on a particular application, there is an opportunity for advocates both for and against the proposal to be heard in a balanced manner.
- 16.2 Members should exercise their opportunity to question each speaker with discretion by restricting their enquiries solely to planning matters and not personal or civil matters that form no part of planning consideration and by challenging any unsubstantiated or uncorroborated statements. Officers should be provided with the opportunity to respond to and comment on all new issues raised during public speaking. This will ensure that decisions reached by the Committee are on the basis of full and fair consideration of all material matters, and disregarding any irrelevant considerations.

## 17 Training

- 17.1 Members must exercise their representational role on behalf of their constituents. At the same time the planning process requires them to take decisions within a legal framework which is evolving continuously through legislation and case law.
- 17.2 Members will be required to receive training when first serving on the Planning Committee. Regular updates will be arranged to keep Members informed of important changes in legislation, procedure or practices.
- 17.3 A record will be kept by the Planning Manager/Senior Governance Officer of the training undertaken by each Member. The *Monitoring Officer* will be advised of any Member who fails to meet the training requirements determined by the Committee.

## 18 Records

- 18.1 Records on planning applications, enforcement and development plan matters should be complete and accurate. Every file shall contain an accurate account of events so that someone who has not been involved in the process can understand what the decision was and why and how it was reached. Where matters have been determined by officers under delegated powers, those decisions will be as well documented and recorded as those taken by Members in a Committee meeting.

## 19 Gifts and Hospitality

- 19.1 Gifts and hospitality give rise to particular problems in respect of the credibility of the planning process and acceptance of gifts or hospitality by Members or officers can be a very serious criminal offence. Both should have particular regard to the provisions of their respective codes of conduct and any guidance issued. In particular they must immediately report to the *Monitoring*

*Officer* any offer of gifts or hospitality of the value of £25 or more whether accepted or not and those must be registered. They should not behave in a way which might be taken as indicating that they are open to such offers.

## 20 Complaints

20.1 Any complaints arising out of the operation of this Protocol will be considered by the Authority's *Monitoring Officer* under the Authority's Complaints Procedure. Where necessary, a report will be considered by the Standards Committee which will keep under review the operation of this Protocol.

20.2 Complainants alleging a breach of the Members' Code of Conduct will be advised to direct their allegations to the Monitoring Officer.

## 21 Advice

21.1 The Authority's *Monitoring Officer* will give advice on the interpretation and operation of this Planning Protocol.